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THE PROCTER & GAMBLE COMPANY
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EXAMINER

COLLINS, RAVEN

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JUAN CARLOS VINSEIRO, MARTIN JAY MAROTTI, and
RAYMOND CHARLES BELL

Appeal 2015-007130
Application 12/714,752¹
Technology Center 3700

Before MICHELLE R. OSINSKI, THOMAS F. SMEGAL, and BRENT M.
DOUGAL, *Administrative Patent Judges*.

SMEGAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's rejection² of claims 1 and 3–7 under 35 U.S.C. § 103(a) as obvious over Lajovic (US 3,906,070, iss. Sept. 16, 1975) and Paoletti (US 2005/0023173 A1, pub. Feb. 3, 2005).³ We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is The Procter & Gamble Company. Br. 1.

² Appeal is taken from the adverse decision of the Examiner as set forth in the Final Office Action, dated January 13, 2015 (“Final Act.”).

³ Claim 2 has been canceled. *See* Amendment filed March 18, 2014.

CLAIMED SUBJECT MATTER

Claim 1, the sole independent claim, is reproduced below and illustrates the claimed subject matter.

1. A closure system for a container having a body, a neck portion and an opening, said closure system comprising
 - a) a cap fitted to cover and seal the opening of said container, said cap comprising a cap top and sidewall connected to and extending from said cap top to a cap bottom and further having an extension of about 2 mm to about 20 mm beyond said cap top thereby defining a peripheral rim for an open air void created from said sidewall extension and said cap top, said sidewall having an upper portion flaring outward thereby defining a truncated inverted cone shape for the cap,
 - b) an overwrap in tight conformance around the cap and at least the neck portion, of said container, said overwrap extending at least 1 mm beyond said peripheral rim to form a finger grip tab and not adhered to the cap top; andwherein the connection between the cap top and sidewall forms an upper and lower void space.

ANALYSIS

Obviousness of Claims 1 and 3–7 over Lajovic and Paoletti

Appellants argue claims 1 and 3–7 together in contesting the rejection of these claims as obvious over Lajovic and Paoletti. *See* Br. 3–4. We select claim 1 as the representative claim for this group, and the remaining claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Regarding claim 1, the Examiner finds that Lajovic discloses a closure system for a container having a body, a neck portion and an opening including, *inter alia*, a cap with a cap top having a side wall extending beyond the cap top to form an upper void space, but that Lajovic “fails to disclose an overwrap extending over the cap.” Final Act. 3–4. However, the Examiner also finds that Paoletti teaches “an overwrap 10 in tight

conformance around the cap 18 and at least the neck portion, of said container, said overwrap extending at least 1 mm beyond said peripheral rim to form a finger grip tab 11 and not adhered to the cap top.” *Id.* at 4 (citing Paoletti, ¶ 20, ll. 11–16; Figs. 2 and 6).

Based on the foregoing, the Examiner determines that it would have been obvious “to modify Lajovic to include [the] outer wrap of Paoletti in order to further protect the outer shell and inner contents of the shell,” and also “inform the user of tampering.” *Id.* The Examiner also points out that “Paoletti teaches the overwrap is a shrink band including a weakened portion comprising one or more lines of perforation 19 (citing Paoletti, ¶ 22; Fig. 2),” and also reasons that it would have been obvious “to modify Lajovic to include the perforation lines in order to easily lift and tear the shrink wrap to gain access to the contents of the container.” *Id.* at 5.

In taking issue with the analysis and conclusions presented in the Final Office Action, Appellants assert that “there is no motivation, suggestion, or teaching provided to one of ordinary skill in the art to combine Lajovic and Paoletti to produce the presently claimed invention,” reasoning that “[t]he only motivation to combine Lajovic with Paoletti is provided in the disclosure of the present invention.” Br. 3. In particular, Appellants contend while “Paoletti discloses an overwrap,” that “there is no disclosure in Lajovic of a need for an overwrap,” *Id.* at 4.

However, this argument is foreclosed by *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 402 (2007), in which the Court rejected the rigid requirement of a teaching, suggestion, or motivation to combine known elements in order to show obviousness. *Id.* at 415. Thus, “if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize

that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.” *Id.* at 417.

We agree with the Examiner that “the shrink wrap surrounding the container of Paoletti serves to inform the user of tampering,” and that “[t]his can also be true for combining [Lajovic] with Paoletti as well as in the present application.” Ans. 5. Appellants have not apprised us of any error in the Examiner’s findings or conclusions, and we find none.

Appellants also contend that “an overlapping overwrap would not work on a toothpaste tube as the cap [of Lajovic] is typically too small in diameter to provide enough area for an overwrap to overlap the top to form a finger grip tab, as in the present invention.”⁴ Br. 4. However, Appellants provide no evidence that the overwrap would not work, and only assert that the cap would typically be too small. Furthermore, in merely reciting “a closure system for a container,” the cap of claim 1 is not limited in size to exclude a toothpaste tube.⁵ *See id.* at 5, Claims App.

Moreover, the rejection is not based on a bodily incorporation of Paoletti’s overwrap onto Lajovic’s cap. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (citations omitted) (“The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference. . . . Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill

⁴ Lajovic’s disclosure is not limited to toothpaste tubes. *See* Lajovic, col. 1, ll. 6–9.

⁵ We note that the Specification, at page 4, lines 31–33, discloses that “The shape, size and type of material from which the container body and closure or cap are constructed may be widely varied without departing from the spirit of the invention.”

in the art.”). The Examiner has asserted that changing the size of the cap is within the level of ordinary skill in the art. Final Act. 4 (*citing In re Rose*, 105 USPQ 237 (CCPA 1955)). Appellants have not disputed this assertion, and we find that a person of ordinary skill in the art would overcome any potential difficulties with the proposed modification within their level of skill. Thus, Appellants argument does not inform us of error.

For the foregoing reasons, we discern no error in the Examiner’s findings and sustain the Examiner’s unpatentability rejection of claims 1 and 3–7 over Lajovic and Paoletti.

DECISION

We AFFIRM the Examiner’s rejection of claims 1 and 3–7.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED